

REPLY EXHIBIT “A”

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10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 **EUGENE TUMBARELLO and
13 SHAMROCK PAINTING, INC**

14 } CASE NO. A-17-763560-C
15 } DEPT. NO. XIX

16 } Plaintiffs/Counterdefendants

17 } v.
18 } **ELIZABETH RAMSEY and GREGG CHAMBERS**

19 } Defendants/Counterclaimants

DEFENDANTS' OPPOSITION
TO MOTION TO ENFORCE
SETTLEMENT AND OTHER RELIEF

20 }
21 } Hearing : February 12, 2019

22 }
23 } Defendants oppose the relief that Plaintiffs are seeking in their motions as the
24 } relief being sought is outside the Memorandum of Understanding [Exhibit A, referred to
25 } herein as the Memo]. The Memo was executed August 15, 2018 following two
26 } appeals filed by Defendants. Three terms are critical for purposes of the pending
27 } motion.

28 } * The Memo expressly was "a global release of all claims". [Section 7]
29 } * "Both sides to bear their own attorney fees and costs"¹ [Section 8]
30 } * "The agrees agree to dismiss the pending legal action in Dist. Court Case
31 } No. A0-17-763560-C and the Matters on Appeal ..." [Section 6]

32 }
33 } Section 6 of the Memo begs the question, If the instant case was agreed to be
34 } dismissed, why is there a pending motion? The appeals were dismissed. [Exhibit B]

35 } Plaintiffs' Motion should be summarily denied and the case dismissed pursuant

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1 to the terms of the very Memo Plaintiffs reply upon to seek relief.

2 The lawsuit involved ownership of two residential parcels in Las Vegas, 1201
3 Westlund and 1207 Westlund Las Vegas, NV 89102.

4 At the settlement conference, Defendants anticipated no problem refinancing
5 the Subject Properties to provide the \$150,000 right away, within the 90 days of the
6 August 15 date. Even paying the \$200,000 amount would be fine if the lis pendens
7 would be cancelled in the Recorder's Office to allow the refinance to happen, but that
8 is an impossibility with the lis pendens remaining in place. See denial letter from
9 Bank of America [Exhibit C] giving the reason for denial "Unable to Obtain Satisfactory
10 Title, Lien Validity or Priority" and Declaration of Gregg Chambers.

11 All of the payments on both houses are current through February, 2019.
12 Defendants live in 1201 Westlund.

13 At this time, given the roller coaster experiences regarding the Subject
14 Properties, if the Court is not inclined to dismiss the case as agreed by the parties in
15 the Memo, Defendants propose to cooperatively sell the property located at 1207
16 Westlund, which has enough equity to satisfy the \$200,000 agreed in the August 15,
17 2018 settlement. 1207 Westlund is appraised at \$425,000 in November, 2018 and the
18 payoff of the mortgage is \$225,000. Alternatively Plaintiffs could agree to "buy" 1207
19 Westlund for the appraised value and the case can be closed with Plaintiffs receiving
20 more than the \$150,000 they would have received by November 15, 2018.

21 The Memo expressly states that both sides are to bear their own attorney fees,
22 so there is no basis for an award of attorney fees. Defendants' appeal was based on
23 the granting injunctive relief Plaintiffs, which is a jurisdictional basis for an appeal.
24 Those issues were settled by the August 15, 2019 and the appeals dismissed. {Exhibit
25 B].

26
27 1. STATUTE OF FRAUDS

28
29 The statute of frauds requiring all transfer of rights in real property be in writing
30 has been the law for literally hundreds of years. Nevada's statute of frauds is set forth
31

1 below.

2
3 NRS 111.205 No estate created in land unless by operation of law or
written conveyance; leases for terms not exceeding 1 year.

4
5 1. No estate or interest in lands, other than for leases for a term not
6 exceeding 1 year, nor any trust or power over or concerning lands, or
7 in any manner relating thereto, shall be created, granted, assigned,
8 surrendered or declared after December 2, 1861, unless by act or
9 operation of law, or **by deed or conveyance, in writing,**
subscribed by the party creating, granting, assigning,
surrendering or declaring the same, or by his lawful agent
thereunto authorized in writing.

10
11 By it's own terms, the August 15, 2018 Memorandum of Understanding resolved
12 all issues between the parties.. The only anticipated transfer of interest was a deed of
13 trust cross collateralized by both properties.

14
15 2. MEETING OF THE MINDS

16
17 Basic contract principles require, for an enforceable contract, an offer and
18 acceptance, meeting of the minds, and consideration. May v. Anderson 119 P.3d
19 1254 121 Nev. 668 (2005) May goes on to hold that a valid contract cannot exist when
20 material terms are lacking or are insufficiently certain and definite. May was a case
21 involving enforcement of a settlement contract, similar to the instant case.

22 In this case, there was an offer and acceptance, consideration and a meeting of
23 the minds which was memorialized in writing and signed by the parties. Defendants'
24 appeals were dismissed, so they certainly exchanged huge consideration.

25
26 3. CONTRACT INTERPRETATION

27
28 If a contract is clear and unambiguous; the contract will be enforced as written.
29 Ellison v. C.S.A.A., 106 Nev. 601, 603, 797 P.2d 975, 977 (1990). But if there are
30 ambiguities, the contract will be interpreted against the drafter. Ringle v. Bruton 120

1 Nev. 82, 86 P.3d 1032 (2004).

2 In determining the parties' intent, the trier of fact must construe the contract as a
3 whole, including consideration of the contract's subject matter and objective, the
4 circumstances of its drafting and execution, and the parties' subsequent conduct.

5 Ringle v. Bruton 120 Nev. 82, 86 P.3d 1032 (2004).

6

7 CONCLUSION

8

9 The Court should enforce the Memo, and dismiss the case if Plaintiffs don't want
10 to accept Defendants' offer to either sell 1207 Westlund and pay Plaintiffs or transfer
11 1207 Westlund to Plaintiffs in full and final satisfaction of the Memo.

12 .

13 /s/ Benjamin B. Childs, Sr.

14

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16 Nevada Bar # 3946
17 318 S. Maryland Parkway
Las Vegas, Nevada 89101
(702) 385-3865
18 Attorney for Defendants /Counterclaimants

19 Exhibits attached :

20 A. Memorandum of Understanding dated August 15, 2018
B. Dismissals of Appeals
C. Bank of America denial letter dated November 13, 2018

22 CERTIFICATE OF ELECTRONIC SERVICE

23

24 This Opposition to Motion to Enforce, with exhibits, was served through the Odessey File and
25 Server system to opposing counsel at filing. Electronic service is in lieu of mailing.

27 /s/ Benjamin B. Childs, Sr

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6
 7 DISTRICT COURT
 CLARK COUNTY, NEVADA

8 EUGENE TUMBARELLO and)	CASE NO. A-17-763560-C DEPT. NO. XIX
9 SHAMROCK PAINTING, INC		
10 Plaintiffs/Counterdefendants)	DECLARATION OF GREGG CHAMBERS IN SUPPORT OF
11 v.)	
12 ELIZABETH RAMSEY and GREGG CHAMBERS))	DEFENDANTS' OPPOSITION TO MOTION TO ENFORCE SETTLEMENT AND OTHER RELIEF
13 Defendants/Counterclaimants)	

14
 15 Beth and I were diligently attempting to refinance the properties at 1201 Westlund and 1207
 16 Westlund so we could pay the \$150,000 we agreed to pay Plaintiffs at the settlement conference in
 17 August, 2018. When we settled it, we did not think it would be a problem at all due to the large
 amount of equity in each property.

18 The problem for lenders turned out to be two fold. First, the \$150,000 was not split out
 19 between the two properties. I was told several times that if each property had a separate amount the
 20 lenders would have refinanced without a problem. They had a problem advancing one amount with a
 mortgage on two separate properties.

21 Secondly, the lenders cited the existence of the recorded Lis Pendens as a total non-starter once
 22 they got the title report. Despite my assurances that the refinancing was to remove the Lis Pendens, the
 23 wouldn't even process the loan application with a Lis Pendens being reported in the title report.

24 1207 Westlund has an appraised value of \$425,000 from November, 2018 when we thought we
 25 were finalizing the refinancing. The balance of the loan amount on 1207 Westlund is about \$225,000
 and all payments are current through February, 2019.

26 Beth and I are fine with selling 1207 Westlund or transferring the property to Plaintiffs if that
 settles this entire case.

27
 28 I declare under penalty of perjury that the foregoing is true and correct.

29
 30 Executed on

1-10-19 Gregg Chambers
 31 (date) (signature)